

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

HAROLD COLEMAN	§	
v.	§	CIVIL ACTION NO. 9:09cv6
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Harold Coleman, proceeding *pro se*, filed this civil action complaining of alleged deprivations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Coleman filed this civil action in the form of a habeas corpus application, but did not challenge the legality of his confinement; instead, he complained of an incident which occurred on December 24, 2008, in which he was allegedly assaulted by an inmate named Larry Bock. He says that he was taken to the medical department, and then was locked up while Bock was not. He asks that Bock be required to compensate him and that the Court order Bock held for trial so as to ensure that he will be present.

The Court ordered Coleman to file an amended petition setting out his claims with more factual specificity, but Coleman failed to do so. On March 10, 2009, the Magistrate Judge issued a Report recommending that the petition be dismissed. The Magistrate Judge observed that Coleman's failure to file an amended petition meant that the case was amenable to dismissal for failure to prosecute or to obey an order of the Court, but said that the case suffered from more serious flaws; specifically, Coleman did not challenge the fact or legality of his confinement, and his petition could not be construed as a civil rights lawsuit because Coleman is subject to the three-strikes bar

of 28 U.S.C. §1915(g). The Magistrate Judge thus recommended that the petition be dismissed with prejudice as to its refiling in the form of a habeas corpus petition, but without prejudice to his right to refile his claim in the form of a Section 1983 lawsuit, after satisfying the conditions set forth in 28 U.S.C. §1915(g).

A copy of this Report was sent to Coleman at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be DISMISSED with prejudice as to its refiling in the form of a habeas corpus petition, but without prejudice as to the Petitioner's right to refile his claims in the form of a Section 1983 civil rights lawsuit, after satisfying the conditions set forth in 28 U.S.C. §1915(g). Finally, it is

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

So ORDERED and SIGNED this 24 day of April, 2009.



Ron Clark, United States District Judge